1951 K **File No.** O. Town Plan 51

Legal Dept

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Subject:— Opinions under the Bombay Town Planning Act 1915—

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85-90.

VVK. 28/7/56/
5C.

Office of the R.L.A.

The view taken by the L.S.G.& P.H. Deptt, in paragraph 3 of its note at pages 35 and 36 is not correct. It is true that a Town Planning Scheme finally sanctioned by Government can, in view of section 46(1), be varied or revoked by a subsequent scheme prepared, published and sanctioned in accordance with the Act. However, till the final scheme is so revoked , substituted or modified , it will not be open to the Municipal Corporation under section 15(1)(b) to grant building permission in accordance with Regulations other than those prescribed in the final Town Planning Scheme sanctioned by Government. Under Section 40(3) of the Act, a Town Planning Scheme finally sanctioned by Government is as if it were enacted in the Act, and no modification or relaxation therein by any authority is possible. Having regard to the whole scheme of the Act, the provisions of section 15 will be available only when a new scheme is under preparation and not when a varied Scheme, which is to replace or modify a final scheme sanctioned by Government is under consideration. The view taken by the Consulting Surveyor is correct.

Id/-

J.R.D.

21/6

Remembrancer of Legal Affairs.

U.R. to L.S.G.& P.H. Deptt. No. 9820 , dated the 21-6-5

OFFICE OF THE R.L.A.

It is not necessary to cancel the notifications issued by the Baroda Government under section 11 of the City Imporvement and Planning Act, 1925 as by virtue of para. 5 of the Baroda State (Application of Laws) Order, 1949 that Act and the notifications issued thereunder stand repealed.

Id/-

J.R.D.

25/7

Remembrancer of Legal Department.

U.R. to L.S.G..& P.H.D. No. 11889 , dated the 26/7 July 51.

VVK. 23/7/56/

5C.

Office of the R.L.A.

The points now urged by the deputation on behalf of the Ahmedabad Corporation at the conference namely the suspension of regulations under section 15 AA and imposition of conditions under section 15(1)(b) of the Bombay Town Planning Act, 1915 were considered by the R.L.A. when he gave his last opinion No.9320 dated 21-6-1951. Section 15 AA has no application to the case. The question of resorting to section 15(1)(b) would not therefore arise . The view taken by L.S.H. & P.H.D. in para 3 of its note at page 75 is correct.

Id/-

J.C.D.

6/8/

Remembrancer of Legal Affairs.

U.H. to L.S.G. No. P.H.D. No. 12673 dated the 7th August 1951.

VVK. 28/7/56/

SC.

Office of the R.L.A.

In short, the question for R.L.A.'s consideration is whether under section 30(10) of the Bombay Town Planning Act, 1915 , it is competent for the arbitrator to exempt the lands of the Housing Board from the Town Planning Scheme No. VII.

The first proviso to section 30(10) of the Bombay Town Planning Act, 1915 (Bom.I of 1915) , provides that (i) the Arbitractor may make variations in the draft scheme, (ii) any variation estimated by him to involve an increase of 10% in the cost of the scheme as described in section 16 shall require the sanction of the Provincial Government .The second proviso to clause (10) further provides that "he shall make no substantial variation without the consent of the local authority and without hearing any objections that may be raised by the owners concerned and that in the case of any substantial variation made by him the owners concerned shall have the right of appeal to the Provincial Government. "In interpreting these provisions the R.L.A. in his opinion No. 706 dated the 4th February 1937 opined "under the proviso to section 30 of the Bombay Town Planning Act, 1915 , the arbitrator who has no objection to the acquisition of the plot for the railway purposes can be asked to vary the the scheme by the exclusion of the plot. Before making the exclusion he should obtain the consent of the local authority and consulty the owner. The Plot may then be acquireed for the railway purposes. The arbitrator has the power to vary the draft scheme under section 30(10) , proviso (i)." In the present case the final scheme has not yet been drawn up. Consequently, it would be comptent for the Consulting Surveyor to vary the scheme by omitting the lands comprised in the Housing Colony from the Ahmedabad Town Planning Scheme No. VII with the consent of the local authority which consent would be necessary as it would involve a substantial variation of the scheme. It is not known whether or not the local

authority is likely to consent to excluding the lands of the Housing Colony from the shceme. However, the Consulting Surveyor may put the matter before the local authority.

Id/-

J.R.D.

9/8.

Remembrancer of Legal Affairs.

U.R. to L. & H.D. No. 12898 , dated the 10th August 1951.

VVK. 28/7/56/

SC.

Legal Department.

Under section 43(1) of the Bombay Town Planning Act, 1915 (Bombay Act No. I of 1915), on or after the day on which the final scheme comes into force the local authority may, after giving prescribed notice and in accordance with the provisions of the scheme, enforce the scheme by (a) removing, pulling down or altering any building etc., or (b) executing any work etc. Sub-section (3) provides that if any question arises as to whether any building or work contravenes the Town Planning Scheme or whether any provision of a Town Planning Act is not complied with in the erection or carrying out any such building or word that question shall be referred to the State Government and its decision shall be final and conclusive and binding on all persons. Under section 52(2)(n) rules are required to be made determining the manner of the notice to be given by the local authority before it takes action under section 43. Rules 22 and 23 of the Rules made under section 52 of the Bombay Town Planning Act, 1915, require notice to be given before removing or pulling down or altering any building etc., under clause (a) of sub-section (1) of section 43 and before executing any work under clause (b) of sub-section (1) of section 43. Reading these provisions together it is clear that if the local authority considers that any person has contravened the provisions of the final scheme and any action is required to be taken either under clause (a) or clause (b) of sub-section (1) of section 43, it will have to give a notice to the person and after hearing him decide whther the person has contravened the provisions of the final scheme and determine whether or not any action should be taken

either under clause (a) or clause (b) of section 43(1), as the case may be. If the person disputes such decision of the local authority, the matter will have to be referred to the State Government under sub-section (3) of section 43 and no action can be taken under sub-section (1) until the dispute is finally decided by the State Government. It is true that sub-section (3) of section 43 does not specify as to who shall refer the question to the State Government for its decision. Obviously, if the decision of the local authority after hearing the person concerned is disputed by him that authority will have to make a reference to the State Government. for, it is that authority which desires to enforce the Scheme.

The view taken by the Civil Judge, Senior Division, Ahmedabad, is correct.

Id/-

P.M.E.

dt/-

Additional Secretary to Government.

U.H. to L.S.G. & P.H.D. No. 13624 , dated the 24 th August 1951.

VVK. 28/7/56/

50.

Legal Department.

The View taken be Local Self Government and Public Health Department is correct. The provisions of the Bombay Town Planning Act will override the terms and conditions of the agreement subject to which the land was allowed to be converted to non-agricultural use (see also s. 527A of the Bom. Municipal Corporation Act, 1888).

Id/- P.M.L.

Additionael Secretary to Government.

U.R. to R.D. No. 14941, dated the 19th September 1951.

VVK. 28/7/56/

SC.

Legal Department.

These linked cases pertain to Final Plots Nos. 128 and 74 belonging to Dr. Kothare and Shri Jagasia, respectively, forming part of the Final Town Planning Scheme No. IV , Bandra. According to the Regulations of the Town Planning Scheme No. IV , Bandra as sanctioned, only one upper storey is allowed. The owners, however, desire to erect a second floor over their existing buildings. The proposal of the Municipality to vary the said Scheme was sanctioned by Government by G.R. L.S.G. & P.H.D. No. 7931, dated 7th September 1949 and the draft Scheme is still awaited. It appears that since the Bombay Municipal Corporation intends to bring the regulations of the Schemes in the suburbs on astandard basis, under the proviso to section 10(1) of the Bombay Town Planning Act, 1915, it requested Government to extend the period of submitting the draft varied schemes by about one year. The Municipal Commissioner for Greater Bombay, states that as Shri Jagasia has consented to make an agreed case under section 27 of the Bombay Town Planning Act, the question of granting him permission to construct a second floor over his existing building is under consideration. In the subsequent reference, the Municipal Commissioner, Greater Bombay, states that Government "having sanctioned the variation of the scheme under H. & L.G.D. G.R. No. 7931, dated 7th September 1949, it is open to the owner, Shri Jagasia, to make it an agreed cas e under section 27 of the Bombay Town Planning Act and apply to the Municipality for sanction, subject of course to such conditions as the Municipality may deem fit to impose. One such condition is the payment of a deposit, which in the case of Shri Jagasia, has been substanitially reduced and fixed at Rs. 1,500/- payable by instalments". He further states "As the proposal is prior to the final sanction of variation of the scheme, it is the practice of the Local Authority of Bombay to allow variation, provided a deposit is paid and the party undertakes to build on his risk. When a party building under this undertaking, he has got to make it an agreed case under section 27 of the Town Planning Act etc. "The Consulting Surveyor to Government.

however considers that the provisions of section 27 of the Bombay Town Planning Act, 1915, cannot be resorted to for the purpose of modifying and relaxing the regulations of a finally sanctioned Town Planning Scheme while preparing a draft varied Scheme. The question for R.L.A.'s consideration is whether while preparing a draft varied Scheme, section 27 of the Bombay Town Planning Act, 1915, can be resorted to for the purpose of modifying and relaxing the regulations of a finally sanctioned Town Planning Scheme.

Under section 40(3) of the Bombay Town Planning Act, 1915, on and after the date fixed in the notification a town planning scheme shall have effect as if it were enacted in this Act. Under section 46(1) a town planning scheme may at any time, be varied or revoked by a subsequent scheme prepared, published and sanctioned in accordance with the Act. Reading these provisions together, it becomes obvious that no modification or relaxation of a town planning scheme as finally sanctioned by Government, is permissible except in the manner laid down by section 46(1) and much less, therefore, by the Municipality by means of an agreement under section 27 of the Act. Section 27(1) provides that the local authority shall be competent to make an agreement with any person in respect of any matter which is to be provided for in a town planning scheme, subject to the power of the State Government to modify or disallow such agreement, and unless it is otherwise provided therein, such agreement shall take effect on and after the day on which the town planning scheme comes into force. The words "which is to be provided for in a town planning scheme" and the words "shall take effect..... comes into force", imply that the intention underlying appears to be that section 27(1)will be available only when a new scheme is under preparation and not when a Varied scheme which is to replace a fina scheme sanctioned by Government is under consideration. The view of the Consulting Surveyor is correct.

Id/-
Additional Secretary to Government

VVK-28/7/56/ G.R. to L.S.G. &P.H.D. No. 15668, dated the 3rd October 1951.
SC.

Office of the R.L.A.

The first question raised for the R.L.A. 's consideration is whether an agreement made in the form at page 21 ante by a local authority is void-.

2. The agreement at page 21 ante provides that the executant agrees to take extra land required for the formation of his final plot and further to agree to make this case an agreed case under section 27 of the Bombay Town Planning Act, 1915, as and when cases arise. Section 27(1) of the Bombay Town Planning Act, 1915, provides that a local authority shall be competent to make any agreement with any person in respect to any matter which is to be peovided for in a town-planning scheme , subject to the power of the State Government to modify or disallow such agreement and, unless it is other wise expressly provided therein, such a reement shall take effect on and after the day on which the town-planning scheme comes into force. It is apparant from this provision that an agreement can be made in respect of any matter which is to be provided for in a town-planning scheme. The section 3 specifies what matters can be provided for in a town-planning scheme . The agreement at page 21 does not appear to provide expressly for any of the matters specifi in section 3.However, it states that the party agrees to take extra land required for the formation of his final plot .Clause (c) of section 3 specified plotting out of lands as building sites as one of the matters for which a town planning scheme may provide. If a plot of land is made as provided in clause (c) of section 3 and such plot includes extra land, the owner is bound to take that land and pay compensation for it. Consequently, what is provided for in the agreement at page 21 would broadly speaking fall under clause (c) of section 3. It would therefore, follow that the agreement in the form at page 21 is not invalid.

3. The second question raised for the R.L.A.'s consideration is whether condition 3 of the Conditions at page 23 ante would over-ride the provisions of sub-section (2)of section 15 of the Bombay Town Planning Act. Condition 3 of the conditions at page 23 provides that no compensation shall be claimable or payable to the applicant or any person interest

interested in the said premises in respect of any building erected or work carried out by virtue of the permission hereby granted and the said premises shall for the purposes of any claim for compensation whether under the Land Acquisition Act, 1894, or the Bombay Town Planning Act, 1915, be treated as if the building or work in respect of which permission is granted by the certificate had not been erected or carried out and the premises had remained in the same state and condition in which they were on the 7th September 1950 (being the date of publication in the official gazette of the local authority's declaration of intention to make a Town Planning Scheme). This condtion does not prohibit any claim for compensation in respect of buildings erected or works carried out before the date of publication of local authority's declaration of intention to make a town-planning scheme. Section 15(2) of the Bombay Town Planning Act saves the Rights of the owner to claim compensation in respect of a building or work begun or a contract entered into before the date on which the local authority published the declaration of intention to make a town-planning scheme. It, is, therefore, apparent that condition 2 of the Conditions at page 23 ante is in no way inconsistent with nor does it override the provisions of sub-section (2) of section 15. Consequently, the right of the owner to claim compensation for any damage, loss or injury resulting from any action taken by a local authority in respect of a building or work begun or contract entered into before the date of declaration of intention to make a town-planning scheme would in no way be prejudiced by condition 2 of the Conditions at page 23 ante.

Id/-J.P.D.
11/10.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 16130 dated, 11th October 1951.

VVK. 88/7/56
SC.